

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 648 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----

STATE OF GUJARAT

Versus

SAMAT DEVA MER

-----

Appearance:

Mr SP Dave, APP for Appellant-State.

Ms. Yamini Desai for MR YOGESH S LAKHANI for Respondent No. 1

-----

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 30/03/99

ORAL JUDGEMENT

The present appeal under section 378 of the Code of Criminal Procedure, 1973 has been directed against the impugned decision of acquittal rendered by the learned Judicial Magistrate, F.C. Porbandar in Summary Case No. 11417 of 1987 dated 7.4.1990. The respondent-accused was placed for trial before the learned Magistrate for the offences punishable under section 66(1) (b) and section 85(1)(3) of the Bombay Prohibition Act, 1949 ("the Act"

for short).

2. The complaint filed by one Arjan Daya Parmar, Head Constable, Baghvadar would indicate that the accused was found having consumed alcohol at his field on 20.9.1987. Thus, according to the prosecution case itself, the accused was alleged to have been found drunk in his field. With this prosecution case, the matter was placed still higher before the learned Magistrate alleging that the accused committed the offence punishable under the aforesaid provisions of the Act. The prosecution examined the medical witness Dr. Kasam Adam Hamdani at Exh. 4 and the complainant Arjan Daha at Exh. 12. The prosecution placed on record Yadi at Exh. 4 and Form-B at Exh. 6, Form-A at Exh. 7 and the FSL Report at Exh. 8. The presence of alcohol was found to be 0.1012 as against the prescribed rate of 0.05. The learned Magistrate has dealt with the medical evidence in this respect and upon appreciation of the evidence, he has observed that there is no clear evidence with regard to coming to the conclusion that the accused was found drunk. It is this part of the impugned decision that has been attacked by the learned Additional Public Prosecutor appearing for the State. Reference in this connection has been made to the decision of this Court in case of Chandbhai Mohmadbhai Sepai versus State of Gujarat (37 (3) GLR 574). It is, no doubt, true that a medical officer who is examining the patient and taking sample of blood can use the official seal of the hospital or the institution as observed by this Court. At the same time, the medical evidence has to be appreciated as a whole and in light of the other evidence. In the present case, although the learned Magistrate has not referred to the other part of the evidence, it would clearly appear from the oral testimony of Dr. Kasam Adam that it was possible for a person suffering from vertigo and taking medicine known as BG Fos to have some alcoholic effect in so far as his blood is concerned. This important part of the medical evidence would assume importance in light of the other evidence which the learned Magistrate has evaluated.

3. It cannot be disputed that the prosecution has not been able to get the support of the panch witnesses in the present case. Besides, it also clearly appears that the prosecution has taken the apparent case from its natural fact situation to one which does not appear in the facts alleged by the prosecution. This would assume importance when the evidence of the complainant is examined. It is a fact that the accused was alleged to have been found drunk from his field whereas the case

that has been set up at the trial is that he was found drunk in a public place. In the cross examination of the complainant, it has been brought to light that at the time of alleged incident, the accused was Sarpanch of village Nagka and that the son of the accused had filed the complaint against the complainant and one Bhima Malde for they having beaten the son of the accused herein.

I have gone through the evidence which has been placed on record as also the impugned decision of acquittal rendered by the learned Magistrate. I have heard the learned A.P.P. for the State as also Ms. Yamini Desai, learned advocate appearing for Mr. Lakhani, learned advocate for the accused. The impugned decision of acquittal is not susceptible of being disturbed on the view taken by the learned Magistrate on appreciation of the evidence.

In the result, this appeal fails. Same is accordingly dismissed.

Dt. 30.3.1999. (M.S.Parikh,J.)

Vyas